

Pro Se 7 (Rev. 09/16) Complaint for Employment Discrimination

UNITED STATES DISTRICT COURT

for the

Northern District of Alabama

2020 JUL 24 P 3:36

N.D. OF ALABAMA

Case No.

2:20-CV-1055-AMM

(to be filled in by the Clerk's Office)

Tiffany Martin

Plaintiff

(Write your full name. No more than one plaintiff may be named in a pro se complaint.)

-v-

Books-A-Million

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

COMPLAINT FOR EMPLOYMENT DISCRIMINATION

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

Street Address

City and County

State and Zip Code

Telephone Number

E-mail Address

Tiffany Martin

409 Royal Oaks Dr.

Hoober, AL 3 Shelby County

AL 35244

251-753-8236

Tiffany.N.Martin@gmail.com

Pro Se 7 (Rev. 09/16) Complaint for Employment Discrimination

☒ Check here to receive electronic notice through the email listed above. By checking this box, the undersigned consents to electronic service and waives the right to personal service by first class mail pursuant to Federal Rules of Civil Procedure 5(b)(2), except with regard to service of a summons and complaint. The Notice of Electronic Filing will allow one free look at the document, and any attached PDF may be printed or saved.

07/24/20
Date

Participant Signature

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (*if known*). Attach additional pages if needed.

Defendant No. 1

Name
Job or Title (*if known*)
Street Address
City and County
State and Zip Code
Telephone Number
E-mail Address (*if known*)

Boots-A-Million

Company

121 West Park Dr

Birmingham, Jefferson County

AL 35211

(205) 942-3737

Defendant No. 2

Name
Job or Title (*if known*)
Street Address
City and County
State and Zip Code
Telephone Number
E-mail Address (*if known*)

Andrea Scutellaro

General Manager

5287 US-280 #221

Birmingham, Jefferson County

AL 35242

(205) 942-3737

Defendant No. 3

Name
Job or Title (*if known*)
Street Address
City and County
State and Zip Code
Telephone Number
E-mail Address (*if known*)

Pro Se 7 (Rev. 09/16) Complaint for Employment Discrimination

Defendant No. 4

Name

Job or Title *(if known)*

Street Address

City and County

State and Zip Code

Telephone Number

E-mail Address *(if known)*

C. Place of Employment

The address at which I sought employment or was employed by the defendant(s) is

Name

Street Address

City and County

State and Zip Code

Telephone Number

Books-A-Million

5287 US-280 #221

Birmingham, Jefferson County

AL 35212

205-945-5181 / 205-942-3737

II. Basis for Jurisdiction

This action is brought for discrimination in employment pursuant to *(check all that apply)*:☐

Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (race, color, gender, religion, national origin).

(Note: In order to bring suit in federal district court under Title VII, you must first obtain a Notice of Right to Sue letter from the Equal Employment Opportunity Commission.)☐

Age Discrimination in Employment Act of 1967, as codified, 29 U.S.C. §§ 621 to 634.

(Note: In order to bring suit in federal district court under the Age Discrimination in Employment Act, you must first file a charge with the Equal Employment Opportunity Commission.)☒

Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 12112 to 12117.

(Note: In order to bring suit in federal district court under the Americans with Disabilities Act, you must first obtain a Notice of Right to Sue letter from the Equal Employment Opportunity Commission.)☐Other federal law *(specify the federal law)*:

- ☐ Relevant state law *(specify, if known)*: _____
- ☐ Relevant city or county law *(specify, if known)*: _____

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

A. The discriminatory conduct of which I complain in this action includes *(check all that apply)*:

- ☐ Failure to hire me.
- ☒ Termination of my employment.
- ☐ Failure to promote me.
- ☒ Failure to accommodate my disability.
- ☐ Unequal terms and conditions of my employment.
- ☐ Retaliation.
- ☐ Other acts *(specify)*: _____

(Note: Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court under the federal employment discrimination statutes.)

B. It is my best recollection that the alleged discriminatory acts occurred on date(s)

10/30/18, 11/7/18, 11/14/18 - 12/23/18

C. I believe that defendant(s) *(check one)*:

- ☐ is/are still committing these acts against me.
- ☒ is/are not still committing these acts against me.

D. Defendant(s) discriminated against me based on my (check all that apply and explain):

- ☐ race _____
☐ color _____
☐ gender/sex _____
☐ religion _____
☐ national origin _____
☐ age (year of birth) _____ (only when asserting a claim of age discrimination.)
☒ disability or perceived disability (specify disability)
Multiple Sclerosis

E. The facts of my case are as follows. Attach additional pages if needed.

(pages attached)

(Note: As additional support for the facts of your claim, you may attach to this complaint a copy of your charge filed with the Equal Employment Opportunity Commission, or the charge filed with the relevant state or city human rights division.)

IV. Exhaustion of Federal Administrative Remedies

A. It is my best recollection that I filed a charge with the Equal Employment Opportunity Commission or my Equal Employment Opportunity counselor regarding the defendant's alleged discriminatory conduct on (date)

May 7, 2019

B. The Equal Employment Opportunity Commission (check one):

- ☐ has not issued a Notice of Right to Sue letter.
☒ issued a Notice of Right to Sue letter, which I received on (date) 04/27/20.

(Note: Attach a copy of the Notice of Right to Sue letter from the Equal Employment Opportunity Commission to this complaint.)

C. Only litigants alleging age discrimination must answer this question.

Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding the defendant's alleged discriminatory conduct (check one):

- ☒ 60 days or more have elapsed.
☐ less than 60 days have elapsed.

V. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

I do not have an exact amount right at this moment. However, if I was terminated by this company in March as they claimed I was in conversations in June 2019, I still was making payments to the company insurance instead of being immediately notified to move to Cobra, which didn't occur until May 2019. He received no steady pay while on FMLA, was out of work and was unable to walk w/ only assistive devices until June 2019. I believe this company owes me for emotional damages, my doctor and specialist visits, and

VI. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing:

07/24/20

Signature of Plaintiff

Printed Name of Plaintiff

Tiffany Martin

B. For Attorneys

Date of signing: _____

Signature of Attorney _____

Printed Name of Attorney _____

Bar Number _____

Name of Law Firm _____

Street Address _____

State and Zip Code _____

Telephone Number _____

E-mail Address _____

WIGGINS CHILDS
PANTAZIS FISHER
GOLDFARB
Advocates & Litigators

May 13, 2020

ROBERT L. WIGGINS, JR.
DENNIS G. PANTAZIS
ANN K. WIGGINS
SAMUEL FISHER
DEBORAH A. MATTISON
JON C. GOLDFARB
GREGORY O. WIGGINS
ROCCO CALAMUSA, JR.
BRIAN CLARK
RUSSELL W. ADAMS
CRAIG L. LOWELL
CANDIS A. MCGOWAN
TEMPLE D. TRUEBLOOD
H. WALLACE BLIZZARD
KEVIN W. JENT
JENNIFER WIGGINS SMITH
ROBERT J. CAMP
RACHEL LEE MCGINLEY
JOSHUA R. GALE
L. WILLIAM SMITH
D. G. PANTAZIS JR.
SIDNEY JACKSON
PATRICK L. PANTAZIS
LACEY DANLEY
EVAN D. PANTAZIS
CHRISTINA MALMAT
LIESELOTTE CARMEN-BURKS
KAMERON M. BUCKNER

ERIC C. SHEFFER
STAFF ATTORNEY

SANDRA DUCA
TIMOTHY B. FLEMING
TERRILL W. SANDERS
OF COUNSEL
Not Licensed in Alabama

ROBERT F. CHILDS, JR.
(1947-2018)

VIA US MAIL AND EMAIL

Tiffany Martin
409 Royal Oaks Drive
Hoover, AL 35244

Re: Tiffany Martin v. Books-a-Million

Dear Tiffany:

Pursuant to what we have discussed today over email, neither myself nor my firm is in a position to file the above referenced lawsuit on your behalf. In order to preserve your claim, you must file in Federal Court by July 25th, 2020. If you need assistance locating other counsel you can contact the Birmingham Bar Association at 2021 2nd Avenue North, Birmingham, AL 35203, 205-251-8006, or the Alabama State Bar at P. O. Box 671 Montgomery, AL 36101, 334-269-1515. If there is anything we can do for you in the future, or any questions you have regarding this letter, please do not hesitate to contact me on my direct line, 205-314-0548.

Sincerely,

Jon C. Goldfarb

Jon C. Goldfarb
Attorney

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: **Tiffany Martin**
409 Royal Oaks Drive
Hoover, AL 35244

From: **Birmingham District Office**
Ridge Park Place
1130 22nd Street South
Birmingham, AL 35205



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

420-2019-02123

ANGELA T. HOWARD,
Intake Supervisor

(205) 212-2030

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA must be filed in a federal or state court **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)



More than 180 days have passed since the filing of this charge.



Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.



The EEOC is terminating its processing of this charge.



The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:



The EEOC is closing your case. Therefore, your lawsuit under the ADEA must be filed in federal or state court **WITHIN 90 DAYS** of your receipt of this Notice. Otherwise, your right to sue based on the above-numbered charge will be lost.

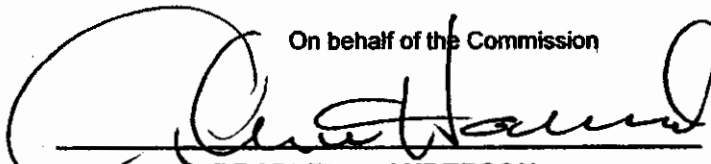


The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred **more than 2 years (3 years)** before you file suit may not be collectible.

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission


BRADLEY A. ANDERSON,
District Director

4/27/2020
 (Date Mailed)

Enclosures(s)

cc:

Vida Boyd
VP of Human Resources
BOOKS A MILLION
402 Industrial Lane
Birmingham, AL 35211

Brooke Henderson
WIGGINS CHILDS PANTAZIS FISHER GOLDFARB
The Kress Building
301 19th Street North
Birmingham, AL 35203

**INFORMATION RELATED TO FILING SUIT
UNDER THE LAWS ENFORCED BY THE EEOC**

(This information relates to filing suit in Federal or State court under Federal law. If you also plan to sue claiming violations of State law, please be aware that time limits and other provisions of State law may be shorter or more limited than those described below.)

PRIVATE SUIT RIGHTS – Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), or the Age Discrimination in Employment Act (ADEA):

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge within 90 days of the date you receive this Notice. Therefore, you should keep a record of this date. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed within 90 days of the date this Notice was mailed to you (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Courts often require that a copy of your charge must be attached to the complaint you file in court. If so, you should remove your birth date from the charge. Some courts will not accept your complaint where the charge includes a date of birth. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS – Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred more than 2 years (3 years) before you file suit may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit before 7/1/10 – not 12/1/10 – in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION – Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE – All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, please make your review request within 6 months of this Notice. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

NOTICE OF RIGHTS UNDER THE ADA AMENDMENTS ACT OF 2008 (ADAAA): The ADA was amended, effective January 1, 2009, to broaden the definitions of disability to make it easier for individuals to be covered under the ADA/ADAAA. A disability is still defined as (1) a physical or mental impairment that substantially limits one or more major life activities (actual disability); (2) a record of a substantially limiting impairment; or (3) being regarded as having a disability. *However, these terms are redefined, and it is easier to be covered under the new law.*

If you plan to retain an attorney to assist you with your ADA claim, we recommend that you share this information with your attorney and suggest that he or she consult the amended regulations and appendix, and other ADA related publications, available at http://www.eeoc.gov/laws/types/disability_regulations.cfm.

“Actual” disability or a “record of” a disability (note: if you are pursuing a failure to accommodate claim you must meet the standards for either “actual” or “record of” a disability):

- **The limitations from the impairment no longer have to be severe or significant for the impairment to be considered substantially limiting.**
- **In addition to activities such as performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, thinking, concentrating, reading, bending, and communicating (more examples at 29 C.F.R. § 1630.2(i)), “major life activities” now include the operation of major bodily functions, such as: functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions; or the operation of an individual organ within a body system.**
- **Only one major life activity need be substantially limited.**
- **With the exception of ordinary eyeglasses or contact lenses, the beneficial effects of “mitigating measures” (e.g., hearing aid, prosthesis, medication, therapy, behavioral modifications) are not considered in determining if the impairment substantially limits a major life activity.**
- **An impairment that is “episodic” (e.g., epilepsy, depression, multiple sclerosis) or “in remission” (e.g., cancer) is a disability if it would be substantially limiting when active.**
- **An impairment may be substantially limiting even though it lasts or is expected to last fewer than six months.**

“Regarded as” coverage:

- **An individual can meet the definition of disability if an employment action was taken because of an actual or perceived impairment (e.g., refusal to hire, demotion, placement on involuntary leave, termination, exclusion for failure to meet a qualification standard, harassment, or denial of any other term, condition, or privilege of employment).**
- **“Regarded as” coverage under the ADAAA no longer requires that an impairment be substantially limiting, or that the employer perceives the impairment to be substantially limiting.**
- **The employer has a defense against a “regarded as” claim only when the impairment at issue is objectively BOTH transitory (lasting or expected to last six months or less) AND minor.**
- **A person is not able to bring a failure to accommodate claim if the individual is covered only under the “regarded as” definition of “disability.”**

Note: Although the amended ADA states that the definition of disability “shall be construed broadly” and “should not demand extensive analysis,” some courts require specificity in the complaint explaining how an impairment substantially limits a major life activity or what facts indicate the challenged employment action was because of the impairment. Beyond the initial pleading stage, some courts will require specific evidence to establish disability. For more information, consult the amended regulations and appendix, as well as explanatory publications, available at http://www.eeoc.gov/laws/types/disability_regulations.cfm.

CHARGE OF DISCRIMINATION		AGENCY <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC	CHARGE NUMBER
This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.			
State or local Agency, if any		and EEOC	
NAME (Indicate Mr., Ms., Mrs.) Ms. Tiffany Martin		HOME TELEPHONE (Include Area Code) 251 753-8236	
STREET ADDRESS 409 Royal Oaks Drive Hoover AL 35244	CITY, STATE AND ZIP CODE	DATE OF BIRTH 1996	
NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)			
NAME Books A Million	NUMBER OF EMPLOYEES, MEMBERS Over 15	TELEPHONE (Include Area Code) (205) 942-3737	
STREET ADDRESS 121 West Park Drive Birmingham AL 35211	CITY, STATE AND ZIP CODE	COUNTY Jefferson	
NAME	TELEPHONE NUMBER (Include Area Code)		
STREET ADDRESS	CITY, STATE AND ZIP CODE	COUNTY	
CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))		DATE DISCRIMINATION TOOK PLACE EARLIEST (ADEA/EPA) LATEST (ALL)	
<input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> AGE <input type="checkbox"/> RETALIATION <input type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> DISABILITY <input type="checkbox"/> OTHER (Specify)		12/23/19 <input checked="" type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):			
<p>I am a person with a disability under the ADA in that I have Multiple Sclerosis, which was recently diagnosed in April 2018. (I authorize the release of this information) I started working for Respondent on 11/7/17 as a Book Seller. I was quickly promoted to co-manager in Mobile and then relocated to the Birmingham location of Respondent at the Brook Highland store. I was promoted to Ast. GM in October 2018. My General Manager is Andrea Scutellaro. I began having problems with my MS in Oct. 2018 causing me to have multiple health issues. I was off work for MS related issues on 10/30/18. On 11/7/18 through my doctor I requested an accommodation under the ADA asking to be off work until 11/13 and upon returning the accommodations were "Avoid bending, avoid heavy lifting and will need sitting accommodations." I spoke to Scutellaro on the phone and told her about my accommodation request. She told me "If you are going to need sitting accommodations you won't be being a manager when you are back." On 11/14/18 I returned to work and informed Scutellaro of the accommodations I needed, and told her I had placed my doctor's note in manager's office on the board. However, Scutellaro refused to accommodate me and continuously made hostile statements concerning my disability and accommodation request. I reported this to upper mgt and HR but Scutellaro continued her treatment and refused to accommodate me. This caused me stress which exacerbated my M.S. and resulted in me having to take a medical leave of absence, which I am now on today until June 10, 2019. As a result, I am not being paid causing me financial harm. I have been discriminated against and harassed because of my disability and my request for accommodation has been refused resulting in my current state of being off work.</p>			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - (When necessary for State and Local Requirements)	
I declare under penalty of perjury that the foregoing is true and correct		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.	
07 May 2019 Date Charging Party (Signature)		SIGNATURE OF COMPLAINANT SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year) 2019	

U.S. EEOC

Birmingham District Office